

REMARKS

The last Office Action has been carefully considered.

It is noted that claims 1, 2, 4 and 6-8 are rejected under 35 U.S.C. 102(b) over the German patent '894918.

Claim 5 is rejected under 35 U.S.C. 102(b) over the Austrian patent 335145.

With the present Amendment, applicant canceled claim 2 and introduced its features into claim 1.

It is respectfully submitted that the new features of the present invention as defined in independent claims 1 and 5 are not disclosed in the references and can not be derived from them.

Before the analysis of the prior art, it is believed to be advisable to explain to the Examiner the new features of the present invention.

The present invention deals with an angle fixing with two limbs.

In accordance with the present invention the two limbs are lockable with one another by a single locking element. In accordance with a further feature of the present invention, the limbs have a constant, longitudinal cross-sectional area over a width of the limbs. In accordance with a further feature of the present invention, the limbs are substantially identical. In accordance with still a further feature of the present invention, the limbs are pivotable about an imaginary pivot axis relative to one another. Also, in accordance with the present invention, the limbs have tongues which project arcuately therefrom.

Turning now to the references and particularly to the German reference, it is respectfully submitted that this reference does not teach the new features of the present invention.

The limbs 4 and 5 of the hinge disclosed in the German reference are not lockable so that the hinge can no longer turn and the element 3 of the frame can no longer turn. This reference does not teach a locking element. The cone 10 of the screw head 9 is arranged in the conical opening in the plate 6 of the limb 4 so that the screw 8 is not locked, as explained on page 2, lines 1-7 and lines 4-45. Thus, the reference does not

disclose an angle fixing in which the two limbs are lockable with one another by a single locking element.

It is also not true that the limbs 4 and 5 of the hinge in the German reference have a substantially constant longitudinal cross-sectional area over a width of the limbs. As can be seen from Figure 2, the limb 4 in the imaginary planes through the plate 6 has a longitudinal cross-sectional area which corresponds to the view in Figure 2, while to the contrary the longitudinal cross-sectional area of the limb 4 between the plates 6, or in other words in the region of the plates 7 of the other limb 5, has a flat rectangular cross-sectional area without the plates 6. The longitudinal cross-sectional areas of the limb 4 is significantly different in the region of the plates 6 and in the intermediate spaces between the plates 6. This is also true for the other limb 5. Therefore, the limbs can not be produced by a continuous drawing or extrusion process, which is a significant advantage of the present invention.

With respect to the limb 4, this limb is inclined as shown in Figure 3. This means that in Figure 3 the lower plate 6 is greater than the medium plate 6 and this is again greater than the upper plate 6. Definitely,

it has nothing to do with a constant cross-sectional area. This feature is not disclosed in the German reference.

It is also not true that the limbs 4 and 5 of the hinge disclosed in the German reference are substantially identical. In order to be identical, the both limbs 4 and 5 first of all must have the same number of plates 6 and 7, or in other words the both limbs 4 and 5 must have two or three plates 6, 7. As can be seen from Figure 2, the limb 5 is longer than the limb 4, as shown in Figure 3 and explained herein above, the limb 4 extends inclinely and not at a right angle to its plate 6. As can be seen from Figure 2, the limb 5 in the region of the plates 6, 7, is inclined in a wedge-shaped manner, while to the contrary the limb 4 as shown in Figure 3 has its full thickness at least to the region of the screw 8 at least to the middle of the plate 6 and is not inclined. Also, the shape of the plates 6, 7 is different as can be seen from Figure 2. The outer edge of the plate 6 extends at the right angle to the limb 4 and transits into a rounding in the limb 4. In the plate 7 the rounding of its outer edge extends further around the screw 8, so that the outer edge of the plate 7 extends at an acute angle to the limb 5, before the outer edge of the plate 7 transits into the rounding in the limb 5. In contrast, the inventive limbs are cut from the same drawn or extruded profiled bar, which provides a favorable manufacturing process.

The screw 8 disclosed in this reference is not a locking element as explained herein above.

Finally, the limbs of this reference are not pivotable about an imaginary pivot axis relative to one another, but instead they are pivotable about a real physical axis. In contrast, in the applicant's invention, as can be seen from the drawings, the limbs are pivotable about an imaginary axis, because it is located outwardly beyond the angle fixing and does not form any real physical axis.

It is therefore believed that this reference does not teach the new features of the present invention as defined in claims 1 and 5.

As for the Austrian patent applied by the Examiner, very detailed arguments were presented in the previous Amendment. It is additionally stated that the limbs 4 and 5 of the device disclosed in this reference are not lockable. The limbs 4 and 5 of this device can be fixed relative to one another only by screwing with additional plates 15, 17 and with a second device. There is no single locking element which locks the limbs with one another.

Also, the limbs of the device disclosed in the reference are not arcuate. An arcuate element is an element which extends over an arc. Instead the limbs 4 and 5 in this reference, at their end cooperating with one another, have a part-circular cross-section.

The Examiner rejected the original claims over the references being anticipated. In connection with this it is believed to be advisable to cite the decision in Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely, the references do not contain all elements of the present invention as defined in claims 1 and 5.

It should be also emphasized that the references do not contain any hint or suggestion for the new features of the present invention. In order to arrive at the applicant's invention from the teaching of the references, the references have to be fundamentally modified. However, it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has also been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision *in re Randol and Redford* (165 USPQ 586) that

Prior patents are references only for what they clearly disclose or suggest; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

It can be safely said that the references do not disclose anything which would give a person of ordinary skill a reason to modify their teachings by the features proposed by the applicant.

Finally, as explained herein above, the construction of the device of the present invention as defined in claim 1 provides for highly advantageous results in simplifying and reducing the cost of the manufacture.

It is well known that in order to support a valid rejection the art must also suggest that it would accomplish applicant's results. This was stated by the Patent Office Board of Appeals, in the case *Ex parte Tanaka, Marushima and Takahashi* (174 USPQ 38), as follows:

Claims are not rejected on the ground that it would be obvious to one of ordinary skill in the art to rewire prior art devices in order to accomplish applicants' result, since there is no suggestion in prior art that such a result could be accomplished by so modifying prior art devices.

In view of the above presented remarks and amendments, it is believed that claims 1 and 5 should be considered as patentably distinguishing over the art and should be allowed.

As for the dependent claims, these claims depend on the independent claims, they share their presumably allowable features, and therefore it is respectfully submitted that they should be allowed.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be

helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,

  
Michael J. Striker  
Attorney for Applicants  
Reg. No. 27233